

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

JOSEPH R. LEMPKA,)	
)	
Appellant,)	Case No. 10R 301
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Joseph R. Lempka ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on November 30, 2010, pursuant to an Order to Show Cause (Filing Defect) issued October 27, 2010. Commissioner Wickersham, Chairperson of the Commission was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham as Chairperson designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the proceeding. Commissioner Salmon was excused. Commissioner Hotz was present. The proceeding was heard by a quorum of a panel of the Commission.

Joseph R. Lempka participated in the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, participated in the hearing by telephone, as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission in this case is as follows.

I. ISSUES

Whether the appeal should be dismissed for failure to timely file required documentation.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. An appeal was received on September 13, 2010. (Case File).
2. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File)
3. Documentation of the decision, order, determination, or action appealed from specified by Section 77-5013 (1) of Nebraska Statutes was received on November 29, 2010. (E1:7)
4. The envelope in which the documentation was delivered is postmarked September 10, 2010. (Case File)
5. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
6. Douglas County has adopted a resolution extending the date for hearing protests pursuant to Section 77-1502 of Nebraska Statutes.

APPLICABLE LAW

1. The Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from is timely filed. Neb. Rev Stat. §77-5013 (Reissue 2009).
2. The documentation required by Section 77-5013 of Nebraska Statutes is deemed timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal.
3. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under Section 77-1502 .
4. Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

IV. ANALYSIS

September 10, 2010 was the last day for filing an appeal from a decision of the Douglas County Board pursuant to section 77-1510 of Nebraska Statutes. The Taxpayer's appeal was filed on September 10, 2010 by mailing but was not accompanied by a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from. Section 77-5013 (1) requires filing of the required documentation on or before the deadline for filing an appeal. If the required documentation is not received on or before the appeal filing deadline the appeal is not perfected and the Commission does not have jurisdiction. A copy of the Douglas County Board's decision from which the Taxpayer wished to appeal was received as a part of Exhibit 1 on November 29, 2010. The appeal was not perfected by the filing deadline and the Commission does not have jurisdiction over the appeal.

V. CONCLUSIONS OF LAW

1. The Commission does not have subject matter jurisdiction in this appeal.

VI. ORDER

IT IS ORDERED THAT:

1. The appeal in Case No. 10R 301 is dismissed.

2. Each party is to bear its own costs in this proceeding.

Signed and Sealed December 8, 2010.

Robert W. Hotz, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE
REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER
PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**